

OPINION
48-49

April 29, 1948 (OPINION)

CORPORATIONS

RE: Directors - Voting by Proxy

Your letter of April 27 asking about non-resident directors and directors voting by proxy has been received and sent to my desk.

Section 10-0507 of the North Dakota Revised Code of 1943 provides that the directors shall be not less than three nor more than fifteen in number. If a corporation does not have the full number of fifteen directors, it is my opinion that additional directors up to fifteen could be elected provided, of course, the by-laws do not restrict the number of directors. It seems that under the above section only one director is absolutely required to be a resident of the state, so if one is a resident, the others do not need to be residents.

The general rule as to whether or not directors may act by proxy is stated in 19 C.J.S. 96, section 750 as follows:

"A director must attend the meetings of the board and act in person. He cannot vote by proxy."

This is the general rule and I cannot find that our Court has ever passed upon the question, and in the absence of a statute authorizing directors to vote by proxy, it is very probable that our Court would follow the rule as stated above. I have been unable to find any provision in our statutes authorizing directors to vote by proxy.

NELS G. JOHNSON

Attorney General